

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 3:07-CR-00159
)
JAMES C. McWHORTER, BEATRICE L.)
McWHORTER, ANTHONY W. KENNEDY,)
CHAD E. VINCENT, CHASTITY A.)
LEONARD, RONNIE MACK HAMPTON,)
ROGER T. RAPP, DAVE MAYO, JR.,)
and SHAWN L. SIMPSON,)
)
Defendants.)
)
_____)

BEFORE THE HONORABLE ROBERT L. ECHOLS, SENIOR JUDGE
TRANSCRIPT OF PROCEEDINGS
May 12, 2008

EXCERPT OF PROCEEDINGS

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1 The above-styled cause came on to be heard
2 on May 12, 2008, at 1:15 p.m., before the Honorable
3 Robert L. Echols, Senior Judge, when the following
4 proceedings were had, to-wit:

5 **EXCERPT OF PROCEEDINGS**

6 THE COURT: Be seated, please.

7 The next case today involves several defendants who are
8 in the courtroom this morning -- this afternoon, rather, for
9 a guilty plea hearing.

10 The style of the case is United States of America vs.
11 James C. McWhorter, who is not here. He is the co-defendant,
12 but his case has been continued.

13 Secondly, there is Beatrice L. McWhorter, Anthony W.
14 Kennedy, Chad E. Vincent, Chastity Leonard, Ronnie Mack
15 Hampton, Roger T. Rapp, Dave Mayo, Jr., and Shawn Simpson.

16 Each of them are represented by their attorneys as
17 follows: Beatrice McWhorter is represented by Jerry
18 Gonzalez. Defendant Kennedy is represented by Mike Flanagan.
19 Chad Vincent is represented by Bob Lynch. Chastity Leonard
20 by John Rodgers. Ronnie Mack Hampton by Paul Bruno. Roger
21 Rapp by Jim Simmons. Dave Mayo by Jude Lenahan. And Shawn
22 Simpson by Kathleen Morris.

23 Each of these defendants has submitted to the Court a
24 proposed *Petition to Enter a Guilty Plea*, as well as a
25 written *Plea Agreement*. I have reviewed those documents

1 before this hearing and we'll talk about those a little
2 later. Addressing --

3 First, I should say that the Government is represented
4 by Ms. Courtney Trombly from the United States Attorney's
5 office.

6 I'm sure all the defendants have spoken with their
7 attorneys about this proceeding today. It consists of a
8 number of questions that I must ask to each of you. And it
9 will take some time to go through that, because each of you
10 must answer individually the questions asked of you.

11 Although by asking all of you being here, the questions
12 will be the same in many cases but will still require your
13 individual answers to those questions. I'll help you along
14 as we go through it, and I think you'll understand that
15 process pretty quickly.

16 Before we begin, I would like for the courtroom deputy
17 to administer the oath. I'll ask each of the defendants to
18 now rise and raise your right hand.

19 (Oath administered.)

20 THE COURT: Be seated, please.

21 All of you should understand that now you've been sworn
22 to tell the truth in these proceedings. Should you answer
23 intentionally any of the questions falsely, then you could be
24 charged with a separate crime of committing perjury, which
25 means uttering a false statement under oath.

1 Let me say as we begin that the purpose of this hearing
2 is to make sure that you're competent to plead guilty; that
3 is, you know what you're doing, you understand the
4 consequence of pleading guilty.

5 I want to make sure that your decision and, in fact,
6 your plea of guilty here this afternoon is being made freely
7 and voluntarily. I want to make sure you understand the
8 nature of the charge or charges to which your plea of guilty
9 is being offered, as well as the maximum penalty provided by
10 law for that punishment. Or in the event there is any
11 mandatory minimum sentence involved, that you understand that
12 as well.

13 I also want to make sure that there is a basis in fact
14 for your guilty plea. That is, is there an independent basis
15 in fact that you agree to that supports your plea of guilty;
16 which means, of course, that you did commit those acts that
17 constitute the crime for which you are charged in this case.

18 So let me ask all of you. Do all of you understand that
19 by pleading guilty here this afternoon that you're waiving
20 your constitutional rights to a trial by jury to determine
21 whether or not you are guilty of this crime?

22 And do you further understand that by pleading guilty
23 here today that after the plea has been accepted you will be
24 considered convicted of that particular crime?

25 I'll start here with you, Ms. McWhorter. Do you

1 understand that?

2 DEFENDANT B. McWHORTER: Yes, sir.

3 THE COURT: Mr. Kennedy?

4 DEFENDANT A. KENNEDY: Yes, sir.

5 (Proceedings continued.)

6 THE COURT: Is your decision to plead guilty a
7 result of discussions that each of you have had with your
8 individual lawyers in this case? And have you told your
9 lawyer all the facts which you believe these charges are
10 based upon?

11 Ms. McWhorter?

12 DEFENDANT B. McWHORTER: Yes, sir.

13 THE COURT: Mr. Kennedy?

14 DEFENDANT A. KENNEDY: Yes, sir.

15 (Proceedings continued.)

16 THE COURT: I'm now going to ask each of you some
17 individual information about you individually. And we'll
18 have to go down the line for this. I'll just ask you to wait
19 patiently until I get to you, but we'll go through this
20 pretty quickly.

21 My first questions on this segment of the hearing will
22 be directed to you, Ms. McWhorter.

23 First, state your full name, please.

24 DEFENDANT B. McWHORTER: Beatrice Lynn McWhorter.

25 THE COURT: I'm going to ask all of you to speak up

1 loudly. There's only a couple of microphones. The court
2 reporter has to hear every word you say, because she has to
3 take it down. I have to hear it, too. And she hears better
4 than I. So speak loudly in answer to the questions.

5 (Proceedings continued.)

6 THE COURT: Next you, Mr. Kennedy.

7 How old are you, please, sir.

8 DEFENDANT A. KENNEDY: 36, sir.

9 THE COURT: And your full name, please.

10 DEFENDANT A. KENNEDY: Anthony Wayne Kennedy.

11 THE COURT: And how much education do you have?

12 DEFENDANT A. KENNEDY: 14 years.

13 THE COURT: Where have you worked in the past?

14 DEFENDANT A. KENNEDY: Construction.

15 THE COURT: Pardon me?

16 DEFENDANT A. KENNEDY: Construction.

17 THE COURT: What kind of construction work did you
18 do?

19 DEFENDANT A. KENNEDY: Framing.

20 THE COURT: Any other jobs?

21 DEFENDANT A. KENNEDY: No, sir.

22 (Proceedings continued.)

23 THE COURT: The next several questions will be
24 asked to you as a group, but it will require individual
25 answers.

1 Have any of you ever been treated for any mental illness
2 or addiction to narcotic drugs of any kind?

3 Ms. McWhorter?

4 DEFENDANT B. McWHORTER: No.

5 THE COURT: Mr. Kennedy?

6 DEFENDANT A. KENNEDY: Yes, sir.

7 THE COURT: Tell me about that.

8 DEFENDANT A. KENNEDY: I went to drug and
9 alcohol --

10 THE COURT: Speak up.

11 DEFENDANT A. KENNEDY: I went to drug and alcohol
12 treatment.

13 THE COURT: When was that? Just approximately.

14 DEFENDANT A. KENNEDY: '94.

15 THE COURT: Were you an inpatient?

16 DEFENDANT A. KENNEDY: Yes, sir.

17 THE COURT: Was that followed by some outpatient
18 care, as well?

19 DEFENDANT A. KENNEDY: Yes, sir.

20 THE COURT: Were you able to stay off of drugs and
21 alcohol after your treatment? Or did you relapse and start
22 using again?

23 DEFENDANT A. KENNEDY: Relapsed and starting using
24 again.

25 THE COURT: What was the drug? Cocaine?

1 Marijuana?

2 DEFENDANT A. KENNEDY: Marijuana, alcohol, various
3 pharmaceutical prescriptions.

4 THE COURT: How long were you able to stay off?

5 DEFENDANT A. KENNEDY: About four years.

6 THE COURT: Did you continue to use up until the
7 time you were arrested in this case?

8 DEFENDANT A. KENNEDY: Yes, sir.

9 (Proceedings continued.)

10 THE COURT: Are any of you defendants under the
11 influence of any drug or medication or alcoholic beverage
12 this afternoon?

13 Ms. McWhorter?

14 DEFENDANT B. McWHORTER: No, sir.

15 THE COURT: Mr. Kennedy?

16 DEFENDANT A. KENNEDY: No, sir.

17 (Proceedings continued.)

18 THE COURT: Have all of the defendants received a
19 copy of the indictment which contain the written charges
20 against you in this case? The written indictment.

21 (Affirmative answers given in unison.)

22 THE COURT: I saw everybody shake their head except
23 you, Ms. Leonard.

24 DEFENDANT C. LEONARD: I said yes, sir.

25 THE COURT: Okay. I'm sorry. Let me just ask you

1 all individually then.

2 Ms. McWhorter?

3 DEFENDANT B. McWHORTER: Yes.

4 THE COURT: Mr. Kennedy?

5 DEFENDANT A. KENNEDY: Yes, sir.

6 (Proceedings continued.)

7 THE COURT: The indictment, as I said, contains
8 written charges against you which represent the alleged
9 violations of law which you plan to plead guilty to by being
10 here today. Have each of you discussed these charges
11 carefully with your lawyer?

12 (Affirmative answers given in unison.)

13 THE COURT: All have indicated that you have.

14 Let me say that the indictment is a legal document, of
15 course, but it is a document that's designed to advise you
16 about the charges to which you must stand trial. The
17 indictment itself is no conviction whatsoever. It's a
18 document to notify you of the charges on which you must stand
19 trial.

20 Under our law, everyone accused of a crime is presumed
21 to be innocent. Even though you've been indicted, under our
22 law you are assumed to be innocent. In other words, you do
23 not have to prove you're not guilty. Rather, it's up to the
24 Government to prove that you are guilty.

25 But, of course, by pleading guilty here today you are

1 admitting that you are guilty, so you are relieving the
2 Government of its obligation to prove that you are guilty.
3 Do all of you understand that?

4 Ms. McWhorter?

5 DEFENDANT B. McWHORTER: Yes, sir.

6 THE COURT: Mr. Kennedy?

7 DEFENDANT A. KENNEDY: Yes, sir.

8 (Proceedings continued.)

9 THE COURT: Have you discussed with your lawyers
10 what the Government must prove in order to find you guilty of
11 these charges against you?

12 Ms. McWhorter?

13 DEFENDANT B. McWHORTER: I didn't understand the
14 question.

15 THE COURT: Pardon me?

16 DEFENDANT B. McWHORTER: I didn't understand the
17 question. I'm sorry. Repeat it.

18 THE COURT: Okay. Have each of you discussed with
19 your lawyers what the Government would have to prove in order
20 to find you guilty of the charges against you in the
21 indictment?

22 DEFENDANT B. McWHORTER: Yes, sir.

23 THE COURT: What about you, Mr. Kennedy?

24 DEFENDANT A. KENNEDY: Yes, sir.

25 (Proceedings continued.)

1 THE COURT: The indictment in this case consists of
2 two counts. Ms. McWhorter and Mr. Kennedy are named in both
3 counts; the rest of you are named only in Count 1.

4 The indictment was issued on August the 29th, 2007. The
5 first count is a conspiracy count. Conspiracy is an
6 agreement between two or more persons to do an illegal act.
7 In this case, the illegal act is described in the indictment.

8 In Count 1, the conspiracy consists of producing false
9 ID documents, which in this case were fraudulent driver's
10 licenses. It also consists of transferring counterfeit
11 securities, meaning those fraudulent payroll checks.

12 It also consists of transferring the driver's licenses
13 which were manufactured in -- they constituted false
14 identification documents. They had your individual
15 photographs, but they contained the identity of others, to
16 facilitate the cashing of fraudulent payroll checks. So
17 those charges are --

18 Also included in the conspiracy was to transfer more
19 than five false driver's licenses, as well as making the
20 fraudulent payroll checks.

21 The second count consists of possessing with intent to
22 transfer five or more false ID documents, which in this case
23 were the fraudulent driver's licenses.

24 In order to prove you guilty of this conspiracy count,
25 the Government would have to prove certain things. They're

1 called elements of the offense.

2 First, they would have to prove there was, in fact, a
3 conspiracy, this agreement; which does not have to be in
4 writing, but there has to be some understanding or an
5 agreement between the participants.

6 The participants must be two or more persons. And they
7 have to agree to commit whatever the underlying crimes were.
8 In this case it was manufacturing and possessing these false
9 identity documents and passing the counterfeit securities of
10 various organizations that were reputed to be employers.

11 Secondly, they would have to prove that you knew what
12 you were doing. That is that you knowingly and intentionally
13 agreed to participate in some way in this conspiracy.

14 And thirdly, they would have to prove that you or other
15 members of the conspiracy committed at least one of the acts
16 alleged in the indictment to accomplish the goals of the
17 conspiracy.

18 As I mentioned, only Ms. McWhorter and Mr. Kennedy are
19 named --

20 Excuse me. All of you are named in Count 1. I had that
21 backwards. All of you are named in Count 1. Ms. McWhorter
22 and Mr. Kennedy are also named in Count 2. And the rest of
23 you are not named in Count 2.

24 So the elements I've just read will apply to each of
25 you, each of whom are planning to plead guilty to Count 1.

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(Proceedings continued.)

1 THE COURT: Do any of you have any complaints about
2 the investigation that your lawyer has done on your behalf?
3 Or do you have any complaints about things that he or she has
4 not done that you believe he or she should have done?

5 Ms. McWhorter?

6 DEFENDANT B. McWHORTER: No, sir.

7 THE COURT: Mr. Kennedy?

8 DEFENDANT A. KENNEDY: No, sir.

9 (Proceedings continued.)

10 THE COURT: With regard to the maximum penalty
11 provided for the offenses to which you plan to plead guilty,
12 I'll first state it with regard to Count 1, which is the
13 conspiracy count. That applies to each of you.

14 The maximum penalty provided by law is imprisonment for
15 not more than five years. The law also provides that the
16 Court may impose a fine of not more than \$250,000.

17 The law also requires that after you're released from
18 prison that you may be sentenced to a period of supervised
19 release of not more than one year. And you'll also be
20 subject to a special assessment of \$100.

21 With regard to Count 2, which applies to Ms. McWhorter
22 and Mr. Kennedy, which is possession of more than five or
23 more false identification documents, the maximum prison term
24 is not more than 15 years.

25 The fine is the same, not more than \$250,000. The

1 supervised release is a bit longer. You may be sentenced to
2 supervised release of not more than three years.

3 And, again, there will be a separate special assessment
4 of \$100 for Count 2.

5 Do either of you, Ms. McWhorter or Mr. Kennedy, have any
6 questions about the maximum penalty provided in Count 2?

7 DEFENDANT B. McWHORTER: No, sir.

8 DEFENDANT A. KENNEDY: No, sir.

9 THE COURT: I'm sure each of your lawyers have
10 discussed with you the possible sentences and the sentencing
11 guidelines, which I wish to discuss with you a bit too.

12 Let me say first that there is no longer any parole in
13 the criminal justice system, federal criminal justice system.
14 So if you are sentenced to prison for a certain period of
15 time, you'll have to serve all of that time except for up to
16 54 days of good time credit, which may be earned by you as
17 credit against your sentence.

18 The good time credit is not automatic, but you may earn
19 up to 54 days of good time credit against your sentence.
20 However, the 54 days of good time credit does not vest or
21 apply until each year you have served, but you may earn that
22 amount off your sentence.

23 After you're released from prison, you'll be subject to
24 a period of supervised release, which is a type of probation.
25 But it's different from probation, in that you are supervised

1 actively by a probation officer of the federal court.

2 During the period of supervised release, you'll have to
3 meet certain conditions. Some of those conditions will
4 restrict you or prohibit you from doing certain things.
5 Other conditions will require you to do certain things during
6 this period of time.

7 There are a lot of different conditions. They generally
8 require you to obey the law and behave yourself. And if you
9 do that, you will not have any trouble. By way of example --
10 although I will not read them all, I'll give you an example
11 of the types of conditions that you'll have to comply with
12 while you're on supervised release.

13 You'll have to report to your probation officer once a
14 month, and at that time you'll be asked to complete a
15 truthful and complete report of your activities. It must be
16 truthful.

17 You'll have to follow the directions of the probation
18 officer and answer truthfully all inquiries by the probation
19 officer.

20 You'll be required to allow the probation officer to
21 visit you at any time, at home, work, or elsewhere.

22 You'll be prohibited from possessing any illegal drugs.
23 You'll be prohibited from using any illegal drugs. And
24 you'll be subject to two periodic drug tests after you're
25 released from prison and as many other random drug tests as

1 the probation officer deems appropriate.

2 You'll be prohibited from leaving the judicial district
3 where you reside without permission of the Court or the
4 probation officer.

5 For those of you that live in Nashville or this
6 surrounding area, the Middle District of Tennessee comprises
7 32 counties. Generally, westward to the Tennessee River;
8 eastward to just past Cookeville on the Cumberland Plateau;
9 and from Kentucky to Alabama.

10 So if you go outside that boundary, you'll have to get
11 permission of the probation officer.

12 You'll be required to notify the probation officer if
13 you change your residence or place of employment, 10 days in
14 advance of that event.

15 If you are arrested or questioned by a law enforcement
16 officer, you will have to report that event to the probation
17 officer, even if it's for a speeding ticket, within 72 hours.

18 You will be prohibited from going around or frequenting
19 any place where illegal drugs are possessed, stored,
20 manufactured, used, or administered or distributed in any
21 way.

22 You'll be prohibited from associating with any person
23 that's previously been convicted of a felony without
24 permission of the probation officer. A felony is an offense
25 that is punishable by more than one year.

1 You'll be required to allow the probation officer to
2 visit you at any time, at home, work, or elsewhere. And if
3 the probation officer sees any contraband in plain view, then
4 the probation officer may seize the contraband.

5 If, as a result of drug tests, you are found to be using
6 illegal drugs, the probation officer may notify the Court.
7 After a hearing, the Court will determine whether you have
8 violated a condition of your supervised release. If the
9 Court so finds, then the Court may revoke the supervised
10 release and require you to serve in prison up to the entire
11 period of the supervised release.

12 You'll be prohibited from drinking alcohol excessively.

13 You'll have to work at some lawful occupation and
14 support your dependents and meet other family obligations.

15 Those are the types of conditions that will apply during
16 this supervised release period.

17 Being on supervised release has other consequences, as
18 well. If you do commit another crime while you're on
19 supervised release, you may receive a higher sentence for
20 that second crime because it was committed while you were on
21 supervised release.

22 Under the guidelines if you have had any prior
23 convictions within the last 15 years, those convictions may
24 serve to increase your sentence for this particular offense.

25 If you committed this particular offense while you were

1 on probation, parole, or supervised release from some prior
2 crime that you committed, then that may increase your
3 sentence under the guidelines.

4 If you committed the present offense less than two years
5 after being released from prison from some prior crime, that
6 may increase your sentence under the guidelines.

7 If you committed the present offense as a part of a
8 pattern of criminal conduct from which you derived a
9 substantial portion of your income, that may increase your
10 sentence under the guidelines.

11 You should be aware that probation is not available to
12 the sentencing judge for most federal offenses. The
13 guidelines in federal court also require the Court to impose
14 a fine for each conviction unless the Court finds that you're
15 not in a financial position to pay such a fine.

16 The guidelines also provide that the Court must impose a
17 \$100 special assessment for each count of conviction.

18 At sentencing the Court will also have to consider
19 certain things, one of which is restitution. These are fraud
20 claims and the allegations are that you defrauded certain
21 people or entities.

22 In every federal sentence the Court must consider the
23 matter of restitution. Restitution means to restore or pay
24 back money or property that may be lost by some victim of
25 your criminal activity.

1 So at sentencing I'll have to consider the subject of
2 restitution to determine if it applies in your individual
3 case; and if so, what amount of restitution should be made a
4 part of your sentence, to be decided by the Court.

5 I know very little about the facts of your case at this
6 point. But I will have to consider the matter of restitution
7 as it applies to each of you individually in determining
8 what, if any, amount of restitution you should be required to
9 pay as a part of your sentence.

10 The Court will also have to consider what the guidelines
11 call relevant conduct. Relevant conduct is defined in the
12 sentencing guidelines, but it applies to all circumstances,
13 damages, and other matters related to your criminal activity.
14 And that's true even though you're pleading guilty only to
15 the specific charges in the indictment and, specifically, the
16 counts of the indictment to which you're pleading guilty.

17 Do any of you have any questions about restitution or
18 relevant conduct as I have described those terms to you?

19 Ms. McWhorter?

20 DEFENDANT B. McWHORTER: No, sir.

21 THE COURT: Mr. Kennedy?

22 DEFENDANT A. KENNEDY: No, sir.

23 (Proceedings continued.)

24 THE COURT: These are felony offenses to which you
25 are pleading guilty, so the Court advises you that conviction

1 of a felony will deprive you of the right to vote in the
2 future.

3 You may not possess a firearm anytime in the future.
4 This prohibition against possession of a firearm applies for
5 the rest of your life, well beyond the period of supervised
6 release.

7 This conviction may be counted as one of the necessary
8 convictions should you later be prosecuted for being a
9 habitual criminal.

10 As you may know, conviction of a felony may make it more
11 difficult for you to be employed by some companies in a
12 certain position.

13 Now a word about the sentencing guidelines. Again, I'm
14 sure your lawyers have discussed it with you, the sentencing
15 guidelines.

16 Let me just say first, as an overview, for every federal
17 crime that's committed there is a corresponding sentencing
18 guideline provision. Those guideline provisions have been
19 promulgated by the United States Sentencing Commission,
20 they've been approved by the United States Congress, and they
21 form an advisory model for sentencing.

22 And sentencing judges are expected to pay attention and
23 take consideration of those guideline policies in imposing
24 sentence, along with certain factors that are contained in a
25 federal statute.

1 But, as I mentioned, for every federal crime there's a
2 corresponding sentencing guideline. And that guideline will
3 determine a base offense level or a beginning point to begin
4 the calculations to determine a guideline range for
5 sentencing.

6 In fraud cases, the beginning point or the base offense
7 level is usually driven by the type of crime. And so each of
8 you will have assigned a base offense level.

9 For most of you pleading guilty to the same count, the
10 base offense level may be the same. I'm sure your lawyers
11 have considered that and your lawyers have discussed it with
12 Ms. Trombly as they prepared the proposed *Plea Agreement* on
13 your behalf. But I suppose you know -- if you don't, I want
14 to make clear -- that I have not been involved in any of
15 those discussions. I don't know what, if any, discussions
16 your lawyers have had with Ms. Trombly.

17 Ms. Trombly does not work for the court. As a matter of
18 fact, she's not even in the same department. I'm in the
19 Department of Judiciary. She's in the executive branch of
20 the Government. And your lawyers are not part of the court
21 and not part of the executive department either. But they
22 have, I know, discussed it, because I've seen these proposed
23 agreements.

24 At any rate, there's a base offense level that has been
25 determined for each of you. And that base offense number or

1 level is stated as a number, a numerical number. Then to
2 that number other numbers or levels may be added, depending
3 on the circumstances of that case.

4 And a number of factors have to be considered and
5 evaluated to determine if they apply in your case and, if so,
6 to what extent. Because the guidelines may give some options
7 as to how many points or how many levels can be added,
8 depending on your conduct.

9 Some factors are called aggravating factors, which
10 increase that base offense level. That is, they're to be
11 added to that level. And other factors are called mitigating
12 factors, which will reduce that number.

13 So the Court will have to go over those same
14 calculations and evaluation to determine what final adjusted
15 base offense level you will have. And after we do those
16 additions and any subtractions that need to be made, there
17 will be a final base offense level, which is stated again as
18 a number.

19 The Court will then look at your criminal history to see
20 if you've had any past criminal convictions. If you have,
21 you may have received what's called criminal history points.

22 The guidelines allow you to accumulate up to three
23 criminal history points for any past conviction. The points
24 are added from one to three. Sometimes you get no criminal
25 history points; but if you do, you get from one to three,

1 depending on the severity of the punishment you received for
2 that past conviction.

3 The Court will add up all the criminal history points
4 you may have accumulated for your past convictions, and then
5 you will be assigned into a criminal history category.

6 There are six criminal history categories, with I being
7 the lowest and VI being the highest. If you have over one
8 criminal history point, you automatically are assigned to the
9 next criminal history category, II. I is the lowest. VI is
10 the highest. If you have 13 or more, you are in the highest
11 criminal history category, VI.

12 Then there's a table that transposes your adjusted base
13 offense level and your criminal history category into a
14 guideline range for sentencing, which is stated from a
15 minimum number of months to a maximum number of months. And
16 that represents your advisory guideline range for sentencing.

17 The Court is not obligated by law to sentence you within
18 that guideline range. I will say that most sentences are
19 within that guideline range, but there's no guarantee that
20 yours will be.

21 Have each of you discussed with your lawyers the
22 guidelines, the federal sentencing guidelines, and the
23 guideline range that will be applicable to your particular
24 case?

25 Ms. McWhorter?

1 DEFENDANT B. McWHORTER: Yes, sir.

2 THE COURT: Mr. Kennedy?

3 DEFENDANT A. KENNEDY: Yes, sir.

4 (Proceedings continued.)

5 THE COURT: Let me ask the lawyers.

6 Do all of you have the originals of the *Petition to*
7 *Enter a Guilty Plea and Plea Agreement*?

8 MR. GONZALEZ: Yes, sir.

9 THE COURT: All right. Would each of you put that
10 document in front of the defendant, so I can point out some
11 things to them just to make sure that they understand. If
12 they have questions, they can ask each of you.

13 I'll say to the defendants if you do have questions,
14 then you may simply turn or motion for your lawyer to come
15 and speak to you about that.

16 I have reviewed these, and most of these *Petitions to*
17 *Enter a Guilty Plea and Plea Agreements* are very similar.
18 Although there may be some differences that I did not detect,
19 because I didn't go over them as closely as I would if I was
20 looking just to see any differences.

21 What I'm going to ask all of you to do is look first at
22 this *Petition to Enter a Guilty Plea*, which may be the first
23 document. And you'll see --

24 I'm looking now at Ms. McWhorter's document. On Page 2
25 of your *Petition to Enter a Guilty Plea*, in the middle of the

1 page, it says that your lawyer has estimated that your
2 adjusted base offense level will be 19. And that at this
3 point, based on the information that Mr. Gonzalez knows,
4 you'll be in Criminal History Category II, which would result
5 in a guideline range for sentencing of from 33 to 41 months.

6 It goes on to say that this is just an estimate by your
7 lawyers. It's not guaranteed and it's not a promise. It's
8 based on the best information that he has at this time.

9 And then if you will -- your petition runs through Page
10 7. The next page should be the beginning of what's called a
11 *Plea Agreement*, which represents an agreement. And it will
12 represent for each of you an agreement between yourselves,
13 your lawyer, and Ms. Trombly about your guilty plea in this
14 case.

15 The *Plea Agreement* has a more detailed calculation of
16 the guideline range in your case. And, again, I'm on
17 Ms. McWhorter's, and I'm looking at Page 7. And there's a
18 beginning discussion of the sentencing guideline
19 calculations.

20 And, of course, Ms. McWhorter and Mr. Kennedy are
21 charged in both Counts 1 and 2. And under the provisions of
22 the guidelines, there are considerations for what's called
23 grouping of counts that are considered to be related. And
24 under those guidelines, Counts 1 and 2 will be grouped
25 together for purposes of calculating the guideline range

1 because they're commonly connected with this criminal
2 objective and common plan or scheme.

3 So the guidelines say that when you do this, you have to
4 make these separate calculations. But they're grouped, and
5 you pick the one with the largest sentencing guideline range.

6 But it starts with a base offense level of six. You see
7 in 11(a)(ii), it says the base offense level for the group is
8 six.

9 Then there is an increase, which is an aggravating
10 factor, because of the amount of the loss. It says because
11 the loss in this case was greater than \$200,000 but less than
12 \$400,000. That's a range that assigns 12 points. It could
13 be higher or lower, depending on what that intended loss or
14 actual loss may be.

15 Then two additional points, it's recommended, would be
16 added because there were more than 10 victims. That's
17 another aggravating -- that's at the top of Page 8.

18 And an additional two points because sophisticated means
19 were used to carry out the crime. In this case, the
20 execution of the fraudulent scheme.

21 And then on (vi) it says it's recommended that you
22 receive a three-point reduction because you've cooperated and
23 accepted your responsibility for participating in this crime.
24 By doing so, you've avoided the necessity of further
25 investigation by the Government and the time and expense

1 required to prepare for trial. So you get a three-level
2 reduction for that.

3 When considering the base offense level and the
4 additions and subtractions, that reduces your base offense
5 level to an adjusted base offense level of 19.

6 Then it looks at your criminal history. As you see, you
7 have had prior convictions. And those convictions result in
8 some criminal history points. I don't know how many, but
9 enough to put you in Criminal History Category II.

10 So that results in an anticipated advisory sentencing
11 range of from 33 to 41 months. That's under (b) in the
12 middle of the page on Page 9.

13 Again, that's your -- in this case, it's not just your
14 lawyer, it's what your lawyer and Ms. Trombly believe should
15 be the appropriate sentencing guideline range in your case
16 based on the information that they know at this particular
17 time.

18 Do you have any question about any of that?

19 DEFENDANT B. McWHORTER: No, sir.

20 THE COURT: Mr. Kennedy, yours should be the same.

21 You've got a *Petition to Enter a Guilty Plea*. That
22 should be the first document. And at the top of Page 2,
23 yours does not state a --

24 Your petition does not state a specific estimate by your
25 lawyer. It simply says your lawyer has given you an estimate

1 of the guideline range that may apply in your case. You
2 realize that it's an estimate, but no specific range is
3 stated as it was in Ms. McWhorter's case.

4 Then if you turn over past Page 6, you'll get to the
5 *Plea Agreement*. And on Page 7, there is again a discussion
6 of your individual guideline calculations that your lawyer
7 and Ms. Trombly have discussed. And again it says that your
8 Counts 1 and 2 should be grouped. That's at the bottom of
9 Page 7.

10 And at the top of Page 8 it says your base offense level
11 should be six. That is the beginning point. As with
12 Ms. McWhorter, 12 points should be added because the loss was
13 greater than \$200,000 but less than 400.

14 Another two points because there are more than two
15 victims. Another two points because sophisticated means were
16 used in carrying out the fraudulent scheme. And then a
17 subtraction of three points because of your --

18 No. Excuse me. Under (vi) it says that there will be
19 an additional three points because you acted as a manager or
20 supervisor of the criminal activity; that is, of the
21 conspiracy. And that the conspiracy was extensive and
22 involved more than five participants.

23 That's another aggravating factor contained in the
24 guidelines. So there will be three additional points added
25 for that.

1 And then under (vii) on Page 8, the last paragraph, it's
2 recommended that you get a three-point reduction as well.

3 On the top of Page 9 is the criminal history
4 calculation. It notes certain crimes that you've had in the
5 past. And you have accumulated sufficient criminal history
6 points to put you in the next category, Criminal History
7 Category III.

8 So your adjusted base offense level is 22. And with a
9 Criminal History Category of III, you have an anticipated or
10 recommended advisory guideline range of from 51 to 63 months.

11 And you see there's a fine -- an estimated fine there,
12 too.

13 Do you have any questions about any of the recommended
14 calculations that you and your lawyer and Ms. Trombly are
15 recommending?

16 DEFENDANT A. KENNEDY: No, sir.

17 (Proceedings continued.)

18 THE COURT: Let me finish here.

19 I don't have to agree with their recommendation. Now,
20 all of your lawyers are experienced. I know them. I've seen
21 them here in the courtroom. They know the sentencing
22 guidelines. I know they're giving you their best knowledge.
23 Ms. Trombly has been prosecuting cases for a while. And
24 they're making a recommendation to me. I don't have to
25 accept their recommendation.

1 Mr. Lenahan is saying he just found out some information
2 he didn't know before. I don't know whether it affects his
3 agreement with Ms. Trombly or not. I'll let them talk about
4 that.

5 MR. LENAHAAN: It won't affect the agreement, Your
6 Honor, at all.

7 THE COURT: Okay.

8 MR. LENAHAAN: If you want me to make a footnote
9 there, I will. But it's just something I found out.

10 THE COURT: Well, you might want to do that, just
11 because you found out about it.

12 Let me just tell the defendants one other thing. After
13 this guilty plea hearing, the United States Probation
14 Department will assign each of you a probation officer to
15 prepare what's called a *Presentence Investigative Report*.
16 And that information will have a lot of background
17 information about each of you. Its purpose is to aid me in
18 sentencing.

19 So it will have personal information about you. Not
20 just about this conspiracy or this charge, but it will have a
21 lot of personal information about you, about your families,
22 your upbringing, your mothers and fathers, brothers and
23 sisters if you have any, any marriages that you may have, any
24 children that you may have, where you've worked, your health,
25 your finances.

1 It will have a factual statement about how this scheme
2 developed and how it was played out and your part in it. And
3 then it will have a recommended calculation of your guideline
4 range for sentencing, just as we've gone over. But they do
5 that independently of what your lawyer and Ms. Trombly have
6 done.

7 So I'll get that. I'll have your agreement with the
8 Government. So that will all be before me at the sentencing
9 hearing. But before the sentencing hearing, you and your
10 lawyer will get a copy of that investigative report, prepared
11 by your probation officer. And you'll have a chance to
12 review it with your lawyer. You'll have a chance to go over
13 the facts in that report and see if you agree with them.

14 If you have any objections, you, through your lawyer,
15 can take it up with the probation officer that prepared the
16 report and see if you can correct anything that you think is
17 in error.

18 If you are not able to correct any objection that you
19 may have to the report, then you can take it up at the
20 sentencing hearing before I impose sentence. And I will
21 decide whether to change it or not after I hear from you and
22 I hear from the probation officer and the Government.

23 But in the final analysis, it will be I, as the
24 sentencing judge, that will determine each of your guideline
25 ranges for sentencing, which is an advisory range. It's not

1 mandatory. But I'll have to establish an advisory guideline
2 range for sentencing. And then it will be up to me to
3 determine what individual sentence is to be imposed in each
4 of your cases.

5 And I will consider it individually. Even though you
6 may be convicted of the same crime, you all are different.
7 You may get the same sentence, but you may not.

8 But there will be this investigative report. And it's
9 prepared independently of the Government. And it's
10 independent of the Court, although the probation department
11 is an arm of the United States District Court.

12 Do any of you have any question about how that process
13 will work with regard to the probation officer?

14 (Negative answers given in unison.)

15 THE COURT: I'll go ahead and tell you that in
16 order to gather this personal background information from
17 each of you, it will be necessary to sit down with you for an
18 interview. Otherwise, they wouldn't know. So they'll ask
19 for an interview with each of you and you'll be sworn to tell
20 the truth.

21 If you intentionally answer falsely in any of the
22 answers that you give to the questions asked by the probation
23 officer, that may increase your sentence under the
24 guidelines.

25 If you want your lawyer to be present when you're

1 interviewed by the probation officer, then you can request
2 your lawyer to be present when you're interviewed to gather
3 this background information and your lawyer can be present at
4 that time.

5 Do any of you have any questions about the *Presentence*
6 *Investigative Report* and how it's prepared and how it will be
7 used to assist me at sentencing?

8 Any questions?

9 (Negative answers given in unison.)

10 THE COURT: I see there are none.

11 I've gone over these calculations in these *Plea*
12 *Agreements* because I want to make sure that you understand
13 them generally. You have to rely largely on your lawyer,
14 because it's a complicated process in learning those things.
15 But you've all indicated --

16 Let me ask again. Have all of you gone over these
17 calculations as to your recommended sentencing guideline
18 range with each of your lawyers?

19 MS. MORRIS: Your Honor, excuse me.

20 THE COURT: Yes.

21 MS. MORRIS: You haven't gone through Ms. Simpson's
22 yet.

23 THE COURT: Pardon me?

24 MS. MORRIS: I don't believe you've gone over
25 Ms. Simpson's *Plea Agreement* yet.

1 THE COURT: I have not? Okay. Thank you. Well, I
2 haven't gotten to her yet. Excuse me, Ms. Simpson.

3 Thank you.

4 (Proceedings continued.)

5 THE COURT: Have each of you read these documents,
6 the *Petition to Enter a Guilty Plea* and the *Plea Agreement*?

7 Have each of you gone over those documents and do you
8 believe -- you've read them carefully and you believe you
9 understand them?

10 Let me just say this before you answer the question.
11 These are legal documents, but they're prepared by lawyers.
12 You've heard Mr. Rodgers say that the *Plea Agreement* was
13 prepared by the Government and submitted to him for approval.

14 But ultimately, each of these documents will be signed
15 by you. They represent your agreement to plead guilty in the
16 case. And with regard to the *Plea Agreement*, it represents
17 your agreement with the Government about the recommendations
18 that are being made by you and the Government to the Court.

19 Have each of you read these documents carefully? And do
20 you believe you understand them?

21 Ms. McWhorter?

22 DEFENDANT B. McWHORTER: Yes, sir.

23 THE COURT: Have you read it and do you believe you
24 understand it?

25 DEFENDANT B. McWHORTER: Yes, sir.

1 THE COURT: Mr. Kennedy?

2 DEFENDANT A. KENNEDY: Yes, sir.

3 (Proceedings continued.)

4 THE COURT: I'm going to ask this as a follow-up
5 question.

6 Have you not only read these documents yourself,
7 Ms. McWhorter, but have you discussed these documents
8 carefully with your lawyer?

9 DEFENDANT B. McWHORTER: Yes, sir.

10 THE COURT: And Mr. Kennedy?

11 DEFENDANT A. KENNEDY: Yes, sir.

12 (Proceedings continued.)

13 THE COURT: If for some reason the Court doesn't
14 accept your *Petition to Enter a Guilty Plea* and your *Plea*
15 *Agreement*, you'll be able to change your plea from guilty to
16 not guilty.

17 On the other hand, if I do accept your petition and your
18 *Plea Agreement*, you will not be able to change your plea of
19 guilty to not guilty, even though I may not agree with all of
20 the recommendations that are made to me on your behalf.

21 Do you understand that, Ms. McWhorter?

22 DEFENDANT B. McWHORTER: Yes, sir.

23 THE COURT: Mr. Kennedy?

24 DEFENDANT A. KENNEDY: Yes, sir.

25 (Proceedings continued.)

THE COURT: I now want to ask whether or not any of you are on probation, supervised release, or parole from any prior sentence.

To repeat, are you presently under -- are you presently on probation or parole or supervised release from any prior offense?

Ms. McWhorter?

DEFENDANT B. McWHORTER: No, sir.

THE COURT: Mr. Kennedy?

DEFENDANT A. KENNEDY: Yes, sir.

THE COURT: Is that from some conviction in state court?

DEFENDANT A. KENNEDY: Yes, sir.

THE COURT: Do you understand, Mr. Kennedy, that by pleading guilty to this crime that that may be a violation of your parole from the state offense?

DEFENDANT A. KENNEDY: Yes, sir.

THE COURT: And if it is, the state would have an option to revoke your probation and require you to serve the balance of your sentence in that state case.

DEFENDANT A. KENNEDY: Yes, sir.

THE COURT: Do you understand that?

DEFENDANT A. KENNEDY: Yes, sir.

(Proceedings continued.)

THE COURT: Knowing all the penalties and

1 implications of a guilty plea, do all the defendants still
2 wish to plead guilty?

3 Ms. McWhorter?

4 DEFENDANT B. McWHORTER: Yes, sir.

5 THE COURT: Mr. Kennedy?

6 DEFENDANT A. KENNEDY: Yes, sir.

7 (Proceedings continued.)

8 THE COURT: I know your lawyers have talked to you
9 about your right to a jury trial. All of you have a right,
10 as provided in the Constitution, to a jury trial.

11 All persons accused of a crime are entitled to a jury
12 trial and a speedy trial; a trial where you're represented by
13 a competent lawyer; a trial in which you are afforded the
14 opportunity for compulsory process, which means you have a
15 right to have subpoenas issued to require witnesses to come
16 and testify on your behalf, whether they want to come or not.

17 And if you pled not guilty, which you have a
18 constitutional right to do, you have a right, of course, to
19 require the Government to try to prove you're guilty. And
20 they would have to do that not before me, but before a jury.

21 A jury would consist of citizens from this division of
22 this district court. If you pled not guilty, the Court would
23 set a trial date and the jury administrator from this court
24 would summon a panel of prospective potential jurors. They
25 would come to court on the trial date.

1 They would all come here and we would have them sworn to
2 tell the truth to questions asked of them. Then we would
3 seat them one by one. First, in the jury box. And we would
4 have more than those seats in the jury box, so in the first
5 row of seats and then over on the benches.

6 Through a process of questions by the Court and lawyers
7 for both sides, we would qualify those jurors. That is, we
8 would determine whether or not we determine they are
9 qualified in the sense that they would be able to listen to
10 the evidence and make an objective finding of the facts in
11 the case and follow the law that the Court directs them
12 applies in the case.

13 The law allows the Court to dismiss jurors if the Court
14 doesn't believe that they can be objective to both sides of
15 the case and be fair.

16 In addition to that, the Court grants to both sides the
17 right to challenge certain jurors that they don't believe
18 could be entirely objective in the case. If the Court
19 agrees, then those jurors would simply be dismissed. There's
20 an unlimited number of challenge for cause, such as that.

21 And the law also gives both sides a right for the
22 lawyers for both sides to use their discretion in dismissing
23 jurors that they don't think would be appropriate in the
24 case. That is, they don't believe they would have an open
25 mind to their side of the case.

1 When all of that process is completed, we would select
2 12 jurors. That would be the jury in the case, along with
3 some alternates -- usually two, sometimes more. And that
4 would be the group of citizens that would hear the evidence
5 presented by the Government.

6 And the trial would then proceed by both sides, the
7 Government and then each of your lawyers, giving an opening
8 statement about what the charges are and what the defenses
9 are. And then the Government would try to prove their case
10 by calling witnesses who would be sworn here in court and
11 take the witness stand right here and testify in front of the
12 jury about what they believe the facts are. That is, what
13 they believe you did that constitutes this crime.

14 Any person that testified for the Government would be
15 subject to cross examination by your own lawyer. The
16 Government could not call you as one of its witnesses. You
17 also have a constitutional right under the Fifth Amendment
18 not to give incriminating evidence against yourself.

19 After all the Government's witnesses have testified,
20 then you would have a chance to put on your own defense. In
21 that regard you have a right to testify in your own defense,
22 if you wish. You have a right to call witnesses if you so
23 wish, which the Court would require to come to court and
24 testify.

25 If you or any witness took the stand, the Government

1 would have a right to cross examine them.

2 After all the proof is in, the lawyers would give their
3 final arguments to the jury to try to point out those things
4 in the proof that they believe support their side of the
5 case.

6 After the final arguments, the Court would read the jury
7 the law that applies in the case. And then the jury would be
8 excused from the courtroom to deliberate, to determine
9 whether the Government has met its high standard of proof, of
10 proving you guilty beyond a reasonable doubt.

11 All verdicts must be unanimous. There's no majority
12 verdicts. So unless each of the 12 jurors was convinced that
13 the Government has met its burden of proof in proving each of
14 these separate elements that I read earlier beyond a
15 reasonable doubt, then they couldn't find you guilty of that
16 offense. If they did, then the jury would have convicted you
17 of that offense.

18 I remind you of that, although I know your lawyers have
19 talked to you about your right to a jury trial. That's how a
20 jury trial, in a general way, would be conducted.

21 But it's important that you understand here today,
22 before we finalize this proceeding, that by pleading guilty
23 here today there will not be any jurors. There will not be
24 even a trial date nor jurors. There won't be any witnesses.
25 There will be no opportunity for the lawyers to even argue

1 The facts are a little bit different, as I recall, as I
2 read them, because all of you did not do the same things.
3 The scheme was generally the same. The fraudulent scheme was
4 the same, but all of you did not do the exact same things.

5 But there is a *Factual Basis*. In Ms. McWhorter's case,
6 it begins on Page 4, at the bottom of Paragraph 9. And then
7 there follows some facts that relate to Count 1. Then
8 there's some facts that relate to Count 2.

9 Now, as we've heard, these documents have been prepared
10 by the lawyers in the case. But, as I said, they represent
11 your agreement. You'll be asked to sign them. And by
12 signing this agreement, you'll be agreeing that those facts
13 are true, because I will be relying on those facts to accept
14 your guilty plea.

15 So each of you have a statement of fact. The facts are
16 similar, but there are some differences because you all
17 operated -- you didn't all have the same role in the offense.
18 But there is a statement in those facts about what -- not
19 only what all the scheme and the conspiracy was about, but
20 what you did in participating in the conspiracy.

21 There's also a section regarding restitution. On
22 Ms. McWhorter's, it's on Page 13, at the bottom, beginning at
23 Paragraph 23. But there's some victims that are identified,
24 along with the amount of the loss. That will be subject to
25 restitution.

1 I can't say for sure that all these victims or the
2 amounts are the same for each of the agreements, but you
3 should look at them. I'm sure your lawyers have looked at
4 them. But I'll call it to your attention because restitution
5 will be an issue in the case, it seems to me at this point.

6 And I will rely on this recommendation made by your
7 lawyer and the Government's lawyer about restitution, along
8 with the report from the probation officer about what he or
9 she recommends would be the restitution for which you might
10 be held accountable in this case, along with any other
11 evidence that may be presented to me at the sentencing
12 hearing.

13 I do note that in some cases it's stated -- in
14 Ms. McWhorter's case, at the bottom of Page 14, in the last
15 paragraph, The defendant acknowledges that the above chart
16 may not contain each and every victim, as some victims are
17 still unknown to the Government at this time. Though the
18 restitution is still being determined and apportioned, the
19 defendant understands and acknowledges that court-ordered
20 restitution to identified victims could amount to more than
21 \$70,000, the acknowledged amount of the loss.

22 Now, in the guideline calculations, one of the enhancing
23 factors is that the loss is greater than \$200,000 but less
24 than \$400,000. That's because of the -- I guess the number
25 of checks cashed.

1 As I say, I don't know all the facts about this case at
2 all. I don't know that that is any sort of contradiction,
3 but I do know that 12 points are being added because the loss
4 falls in between \$200,000 and \$400,000 under that section of
5 the guidelines.

6 Next I want to call your attention to the section on
7 *Waiver of Appellate Rights*, which is on Page 16, Paragraph 28
8 in Ms. McWhorter's. It may be at a different page, but it's
9 generally toward the back of the agreement. And in that
10 section, you are waiving most of your appeal rights.

11 Now, the Government is also waiving most of its appeal
12 rights in this same paragraph. But it states that you
13 understand, under Paragraph 28 of Ms. McWhorter's, on Page 16
14 -- and all the language is similar. You understand that by
15 signing this agreement and pleading guilty, you are waiving
16 all the appellate rights that would have been available to
17 you if you exercised your right to go to trial.

18 Well, of course, none of you are going to trial, so you
19 don't have those same appeal rights. You are pleading
20 guilty.

21 You also agree that you will not file any appeal from
22 the sentence imposed by the Court at your sentencing hearing;
23 nor litigate the amount that you receive by the Court after
24 you begin to serve your sentence under the statutes that are
25 stated in this paragraph, including any right you may have to

1 file a writ of habeas corpus, as to any sentence within or
2 below the anticipated guideline range.

3 And the Government also waives any right to appeal the
4 sentence imposed by the Court so long as the sentence is
5 within or above the anticipated guideline range -- within or
6 above the guideline range or below the guideline range if the
7 Government has moved for a downward departure.

8 And this agreement is binding on both parties. However,
9 your waiver of appeal rights is not complete. That is, you
10 do reserve certain rights to appeal. And that's at the
11 bottom of this paragraph.

12 The rights of appeal or the grounds for appeal are
13 reserved so long as it involves a claim of involuntariness of
14 your plea of guilty, which we're taking a lot of time here to
15 make sure that your plea of guilty is voluntary.

16 But if you have a claim on the involuntariness of your
17 guilty plea or if you believe the Government has engaged in
18 prosecutorial misconduct or if you believe you've received
19 ineffective assistance of your own counsel, then you may file
20 an appeal. So I'll call those additional provisions to your
21 attention.

22 Do any of the defendants have any question about these
23 additional procedures that I have just mentioned to you?

24 Ms. McWhorter?

25 DEFENDANT B. McWHORTER: No, sir.

1 THE COURT: Mr. Kennedy?

2 DEFENDANT A. KENNEDY: No, sir.

3 (Proceedings continued.)

4 THE COURT: Do these documents, the *Petition to*
5 *Enter a Guilty Plea* and the *Plea Agreement*, contain every
6 understanding that you have with your lawyer and with the
7 Government as it relates to the *Plea Agreement* about your
8 plea of guilty in the case?

9 Do they contain completely every understanding you have
10 about your plea of guilty in the case?

11 Ms. McWhorter?

12 DEFENDANT B. McWHORTER: Yes, sir.

13 THE COURT: Mr. Kennedy?

14 DEFENDANT A. KENNEDY: Yes, sir.

15 (Proceedings continued.)

16 THE COURT: Has anyone undertaken to promise you,
17 guarantee you, or suggest to you what specific sentence you
18 will receive in this case, other than estimating the
19 guideline range?

20 Ms. McWhorter?

21 DEFENDANT B. McWHORTER: No, sir.

22 THE COURT: Mr. Kennedy?

23 DEFENDANT A. KENNEDY: No, sir.

24 (Proceedings continued.)

25 THE COURT: Has anybody put any pressure on you,

1 physically or psychologically, in order to get you to plead
2 guilty in the case?

3 Ms. McWhorter?

4 DEFENDANT B. McWHORTER: No, sir.

5 THE COURT: Mr. Kennedy?

6 DEFENDANT A. KENNEDY: No, sir.

7 (Proceedings continued.)

8 THE COURT: Have any of you had any alcoholic
9 beverage within the last 24 hours? Or have any of you taken
10 any drugs, medicine, pills, hallucinogens, or anything else
11 containing a narcotic or mind-altering substance, other than
12 ones that have been mentioned for depression and one for this
13 mental imbalance situation?

14 Anything else that any of you have taken in that nature
15 within the last 24 hours?

16 Ms. McWhorter?

17 DEFENDANT B. McWHORTER: No, sir.

18 THE COURT: Mr. Kennedy?

19 DEFENDANT A. KENNEDY: No, sir.

20 (Proceedings continued.)

21 THE COURT: Are all of your minds clear and you
22 know exactly what you're doing by pleading guilty here this
23 afternoon?

24 Ms. McWhorter?

25 DEFENDANT B. McWHORTER: Yes, sir.

1 THE COURT: Mr. Kennedy?

2 DEFENDANT A. KENNEDY: Yes, sir.

3 (Proceedings continued.)

4 THE COURT: I'll ask all the lawyers these
5 questions.

6 First, do each of you believe your respective client is
7 competent to enter a plea of guilty?

8 Secondly, have you discussed with them the advantages,
9 as well as the disadvantages, of a jury trial?

10 And third, do you believe your client is making a
11 knowingly and voluntary waiver of his or her right to a jury
12 trial?

13 Mr. Gonzalez?

14 MR. GONZALEZ: Yes, sir.

15 THE COURT: Mr. Flanagan?

16 MR. FLANAGAN: Yes, Your Honor.

17 (Proceedings continued.)

18 THE COURT: Do all of you believe --

19 Let me ask it this way. Has anything come to your
20 attention which raises a question at all about the competence
21 of your client to waive a jury trial?

22 Mr. Gonzalez?

23 MR. GONZALEZ: No, sir.

24 THE COURT: Mr. Flanagan?

25 MR. FLANAGAN: No, Your Honor.

1 (Proceedings continued.)

2 THE COURT: Okay. Ms. Trombly, I don't have any
3 questions for you. I'm assuming the Government is relying on
4 the written statements of the facts by each of the defendants
5 to support their respective pleas of guilty.

6 MS. TROMBLY: That's correct, Your Honor. Thank
7 you.

8 THE COURT: So is it true as to each of these
9 defendants that you are pleading guilty here this afternoon
10 because, in fact, you are guilty of the offense to which you
11 are entering your plea?

12 Is that true, Ms. McWhorter?

13 DEFENDANT B. McWHORTER: Yes, sir.

14 THE COURT: Mr. Kennedy?

15 DEFENDANT A. KENNEDY: Yes, sir.

16 (Proceedings continued.)

17 THE COURT: Ms. Trombly, has anything come to your
18 attention that raises a question as to the competence of any
19 of these defendants to waive their right to a jury trial and
20 enter a plea of guilty?

21 MS. TROMBLY: No, Your Honor.

22 THE COURT: The Court has observed the appearance
23 of each of these defendants and noted their responsiveness to
24 the questions asked of them by the Court. Based on the
25 answers given and the Court's observation, the Court makes

1 these findings:

2 Each of the defendants is in full possession of their
3 faculties and they are competent to plead guilty.

4 Each of them is not under the influence of any
5 narcotics, hallucinogens, alcohol, or other mind-altering
6 substance.

7 They each understand the nature of the charge to which
8 their respective plea is offered, as well as the maximum
9 possible penalty provided by law.

10 Each waives his or her constitutional rights to a jury
11 trial and the constitutional rights accorded all persons
12 accused of a crime.

13 Each is aware of the *Plea Agreement* and *Petition to*
14 *Enter a Guilty Plea* made in their behalf. Each of the
15 defendants adopts the terms of their documents, including the
16 *Petition to Enter a Guilty Plea* and *Plea Agreement*.

17 The Court finds that each has knowingly offered to plead
18 guilty voluntarily.

19 Finally, the Court finds that there is an independent
20 basis in fact to support each of the pleas of guilty.

21 I would ask each of the lawyers to have their clients
22 sign the *Petition to Enter a Guilty Plea*, as well as the *Plea*
23 *Agreement*. And then sign -- excuse me, sign both of those
24 documents in the space provided and then to initial each page
25 of both documents.

1 Then if the lawyers would sign in the space provided by
2 them on both documents and pass it to Ms. Trombly for her
3 signature on both documents, as well.

4 (Pause in proceedings.)

5 THE COURT: Before we conclude the guilty plea
6 hearing, do any of the defendants have any questions before
7 we adjourn? Either of me or your lawyers.

8 (No response.)

9 THE COURT: The sentencing hearings will be set by
10 separate order by the Court. As I say, it's usually in about
11 90 days. But we will set a separate hearing for each of you.
12 Some of them may be combined, as we have here today, but I
13 don't know that for a fact.

14 So if there's no other --

15 MS. TROMBLY: Your Honor --

16 THE COURT: Pardon me.

17 MS. TROMBLY: Before we conclude, Your Honor, may I
18 be heard briefly?

19 THE COURT: Yes.

20 MS. TROMBLY: Your Honor, thank you.

21 At this time the Government would move the Court to seal
22 each of the *Plea Agreements* in this case. The Government has
23 received strong evidence of potential threats being received
24 by several of these defendants. And what may not amount to
25 threats is certainly witness tampering.

1 And we have concerns that between now -- the gap between
2 now and any trial that may or may not take place with other
3 co-defendants or the other co-defendant, we're very concerned
4 that that type of behavior might continue. Because of that,
5 we would move that these documents be sealed to protect each
6 of these individuals.

7 THE COURT: All right. That motion will be
8 granted.

9 MS. TROMBLY: Thank you, Your Honor.

10 (Proceedings continued.)

11 THE COURT: If there's no other matters to come
12 before the Court, then we'll stand adjourned.

13 (Recess was taken at 3:30 p.m.)
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REPORTER'S CERTIFICATE

I, Dorothy Stiles, Official Court Reporter
for the United States District Court for the Middle District
of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine
the proceedings held in open court on May 12, 2008, in the
matter of UNITED STATES OF AMERICA vs. ANTHONY W. KENNEDY,
Case No. 3:07-CR-00159-3; that said excerpt of proceedings in
connection with the hearing were reduced to typewritten form
by me; and that the foregoing transcript (Pages 1 through 56)
is a true and accurate record of said excerpt of proceedings.

This the 9th day of September 2009.

/s/ Dorothy Stiles, RMR, CRR
Official Court Reporter